

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

In re:

Case No. 09-71367

PAUL M. SCHULTE, and  
MICHELE A. SCHULTE,

Chapter 7

Judge Thomas J. Tucker

Debtors.

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**ORDER DENYING FORD MOTOR CREDIT COMPANY LLC'S MOTION TO EXTEND  
THE DEADLINE FOR FILING A REAFFIRMATION AGREEMENT (DOCKET # 33),  
AND DISAPPROVING REAFFIRMATION AGREEMENT BETWEEN  
DEBTORS AND FORD MOTOR CREDIT COMPANY LLC (DOCKET # 32)**

On October 10, 2009, Debtors filed a joint voluntary petition for relief under Chapter 7. On January 19, 2010, the Court entered an order granting Debtors a discharge under 11 U.S.C. § 727 (Docket # 28).<sup>1</sup> On February 2, 2010, a Reaffirmation Agreement between Debtors and Ford Motor Credit Company LLC ("Ford") was filed (Docket # 32). Part B of the Reaffirmation Agreement shows that Ford signed it on January 26, 2010, after the Debtors were granted a discharge. On February 2, 2010, Ford filed a motion to extend the deadline to file the Reaffirmation Agreement (Docket # 33, the "Motion"). On March 3, 2010, Ford filed a Certification of Non-Response indicating that no one had filed an objection to the Motion. The Court must deny the Motion for the following reasons.

Under 11 U.S.C. § 524(c)(1), a reaffirmation agreement is not enforceable unless it "was made before the granting of the discharge under section 727." *See In re Herrera*, 380 B.R. 446,

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<sup>1</sup> It appears that the discharge order was entered one day too soon. The deadline for objections to discharge fell on Monday, January 18, 2010 (60 days after the date first set for the § 341(a) meeting of creditors, *see* Fed.R.Bankr.P. 4004(a), which was a legal holiday, so the deadline was Tuesday, January 19, 2010, under Fed.R.Bankr.P. 9006(a)(1)(C). The discharge order should have been entered on Wednesday, January 20, 2010, instead of one day earlier. But the entry of the discharge order one day early is not material to the Court's rulings in this Order.

449-55 (Bankr. W.D. Texas 2007) and cases cited therein. Because Ford did not sign the Reaffirmation Agreement until January 26, 2010, the Reaffirmation Agreement was not made before the Debtors were granted a discharge, and is not enforceable.

The Court further notes that the deadline to file a reaffirmation agreement is established by Fed.R.Bankr.P. 4008(a) — the deadline is “no later than 60 days after the date first set for the meeting of creditors under § 341(a) of the Code.” In this case, the deadline was January 19, 2010. Rule 4008(a) also provides that the Court may extend this deadline. But Fed.R.Bankr.P. 4004(c)(1)(J) contemplates that such a motion to extend can only be granted if the discharge has not yet been granted. *See* Fed.R.Bankr.P. 4008 advisory committee notes to 2008 Amendments (“Rule 4004(c)(1)(J) accommodates . . . an extension [of time for filing a reaffirmation agreement] by providing for a delay in the entry of discharge during the pendency of a motion to extend the time for filing a reaffirmation agreement.”). Because the Motion was not filed before the discharge was granted on January 19, 2010, it was filed too late and cannot be granted.

Because the Reaffirmation Agreement at issue is not enforceable, the Court must disapprove it. Accordingly,

IT IS ORDERED that the Motion (Docket # 33), is DENIED.

IT IS FURTHER ORDERED that the Reaffirmation Agreement (Docket # 32), is DISAPPROVED.

**Signed on March 04, 2010**

**/s/ Thomas J. Tucker**  
**Thomas J. Tucker**  
**United States Bankruptcy Judge**